

Signed AOC (9/27/04)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II

SDMS Document



109908

-----:  
IN THE MATTER OF THE COMPUTER CIRCUITS :  
SUPERFUND SITE :

145 Marcus Blvd., Inc., :

Respondent. :

Proceeding under Section 106(a) of :  
the Comprehensive Environmental :  
Response, Compensation, and Liability :  
Act of 1980, as amended, 42 U.S.C. :  
§9606(a). :

ADMINISTRATIVE  
ORDER ON CONSENT  
FOR REMOVAL ACTION

Index Number  
CERCLA-02-2004-2005

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order on Consent ("Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and 145 Marcus Blvd., Inc. (the "Respondent"). This Order provides for the performance of a removal action by Respondent at the Computer Circuits Superfund Site (the "Site"), which is located on 145 Marcus Boulevard, Hauppauge, Suffolk County, New York.

2. This Order is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §9606(a), and delegated to the Administrator of EPA on January 23, 1987, by Executive Order No. 12580 (52 Federal Register 2926, January 29, 1987) and further delegated to the EPA Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-C.

3. EPA has notified the New York State Department of Environmental Conservation ("NYSDEC") of this Order pursuant to Section 106(a) of CERCLA, 42 U.S.C. §9606(a).

4. Respondent's participation in this Order shall not constitute or be construed as an admission of liability or of EPA's findings or determinations contained in this Order. Respondent agrees to comply with and be bound by the terms of this Order. Respondent further agrees that it will not contest the validity of this

Order or its terms in any proceeding to enforce the terms of this Order.

## II. PARTIES BOUND

5. This Order applies to and is binding upon Respondent and its successors and assigns. Respondent agrees to instruct its officers, directors, employees and agents involved in the performance of the Work required by this Order to cooperate in carrying out Respondent's obligations under this Order. Respondent agrees that its officers, directors, employees, and agents involved in the performance of the Work required by this Order shall take all necessary steps to accomplish the performance of said Work in accordance with this Order. Any change in the ownership of any of Respondent's assets, including, but not limited to, any transfer of assets or real or personal property, shall not alter the responsibilities of Respondent under this Order.

6. Until the completion of the Work required by this Order, Respondent shall provide a copy of this Order to any prospective owners or successors before a controlling interest in Respondent's assets, property rights, or stock are transferred to the prospective owner or successor.

7. Not later than sixty (60) days prior to the transfer by Respondent of any real property interest in any property included within the Site, Respondent shall submit a true and correct copy of the transfer document(s) to EPA, and shall identify the transferee by name, principal business address and effective date of the transfer.

## III. DEFINITIONS

8. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or its implementing regulations. Whenever terms listed below are used in this Order or in an attachment to this Order, the following definitions shall apply:

a. "Day" means a calendar day unless otherwise expressly stated. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal Holiday, the period shall run until the close of business on the next working day.

b. "Hazardous substance" shall have the meaning provided in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

c. "Party" or "Parties" means the United States Environmental Protection Agency and/or Respondent.

d. "Waste" means (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. §9601(14); (2) any "pollutant or contaminant" under Section 101(33) of CERCLA, 42 U.S.C. §9601(33); (3) any "solid waste" under Section 1004(27) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6903(27); and (4) any mixture containing any of the constituents noted in (1), (2) or (3), above.

e. "Work" means all work and other activities required by and pursuant to this Order except those required by Paragraph 62 relating to retention of records.

#### IV. EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

9. The "Site," which includes a property that is approximately 1.7 acres in size, is located at 145 Marcus Boulevard in Hauppauge, New York. The Site is located in an industrial-commercial area of West Central Suffolk County, approximately 1.5 miles southwest of Nissequogue River State Park and approximately 1.2 miles southwest of New Mill Pond. The nearest residential area is located less than 0.4 miles north of the Site. One building, occupying approximately 0.4 acres, is located on the Site.

10. MCS Realty owned the Site from 1969 to 1991. On July 15, 1991, Respondent purchased the Site property from MCS Realty Co., and is the current owner.

11. Computer Circuits Corporation ("Computer Circuits") was reportedly the first commercial/ industrial occupant of the Site. Computer Circuits was a circuit board manufacturing company which continuously operated at the Site from approximately 1969 to 1977. Chemicals used in Computer Circuits's manufacturing processes included copper sulfate, nickel, sulfuric acid, hydrochloric acid, lead fluoroborate, fluorides, copper, gold cyanate, ammonia, lead, nitric acid, and tin. Trichloroethylene ("TCE") and various photography chemicals were also used at the Site in related support processes. Waste liquids from manufacturing processes were discharged to five cesspools located to the southeast of the building. Waste liquids from support processes were discharged to a single cesspool on the north side of the building. On numerous occasions between 1976 and 1977,

the Suffolk County Department of Health Services ("SCDHS") collected samples from various cesspools, and found that copper and lead were consistently detected at levels above the State Pollutant Discharge Elimination System permit limits. An inspection conducted by SCDHS in 1976 revealed that the Site was littered with trash, broken barrels, and spilled piles of chemicals and blue/green colored sludges. In 1977, Computer Circuits apparently ceased operations at the Site in response to an injunction filed by the New York State Department of Environmental Conservation ("NYSDEC") and subsequently vacated the Site.

12. Historical sampling surveys performed at the Site detected contaminants at the Site including the following: lead, copper, nickel, zinc, TCE, 1,2-dichloroethylene, 1,1-dichloroethylene ("1,1-DCE"), 1,1,1-trichloroethane ("1,1,1-TCA"), and tetrachloroethene ("PCE").

13. Three public drinking water wells are located within 3 miles of the Site. These wells are operated by the Suffolk County Water Authority. The potential exists for contamination of ground water in this region, the sole source of drinking water, due to the wastewater discharged to leaching pools on this site.

14. On May 10, 1999, the Site was placed on the National Priorities List, 40 C.F.R. Part 300, Appendix B, which was established pursuant to Section 105(a) of CERCLA, 42 U.S.C. §9605(a).

15. On September 29, 2000, Respondent voluntarily entered into an Administrative Order on Consent, Index No. CERCLA-02-2000-2036, to conduct a Remedial Investigation/Feasibility Study ("RI/FS") to determine the nature and extent of contamination at the Site, and to evaluate remedial alternatives.

16. On January 3, 2003, Respondent submitted a draft Remedial Investigation ("RI") Report for the Site. During the RI, samples were collected from several media including surface and subsurface soils, groundwater, and air. The RI identified the presence of elevated levels of several contaminants in the soil. In addition, air samples collected from the indoor air of the building identified the presence of volatile organic compounds ("VOCs") including TCE; 1,1,1-TCA; 1,1-dichloroethane ("1,1-DCA"); 1,2-dichloroethane ("1,2-DCA"); 1,1-DCE; 2-butanone; acetone; methylene chloride; and toluene. In particular, TCE was identified at levels of concern: TCE was detected in indoor air (maximum concentration detected was 220 micrograms per cubic meter ("ug/m<sup>3</sup>"); in soils just beneath the slab of the northern

side of the on-Site building (maximum concentration detected was 12,000 parts per billion ("ppb")) and in soils within the leaching pool adjacent to the north side of the building (maximum concentration detected was 55,000 ppb).

17. Among the contaminants found at the Site, including those identified in Paragraphs 11, 12 and 16 above, are numerous contaminants which are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

18. The conditions at the Site constitute an actual or threatened "release" within the meaning of Sections 101(22) and 104(a) of CERCLA, 42 U.S.C. §§9601(22) and 9604(a). In addition, there is a threat of further releases of hazardous substances at and from the Site to air and groundwater.

19. Exposure to the various hazardous substances detected at the Site by direct contact, inhalation or ingestion can cause a variety of adverse human health effects.

20. The Site constitutes a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. §9601(9).

21. Respondent is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. §9601(21).

22. Respondent is an "owner or operator" within the meaning of Section 107(a) of CERCLA, 42 U.S.C. §9607(a), and is thus a responsible party under Section 107(a) of CERCLA.

23. Respondent has been given the opportunity to discuss with EPA the basis for issuance of this Order and its terms.

#### V. DETERMINATIONS

24. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"). These factors include, but are not limited to, the following conditions:

- a. actual or potential exposure to nearby human populations, animals or the food chain from hazardous substances or pollutants or contaminants;
- b. actual or potential contamination of drinking water supplies or sensitive ecosystems; and

- c. high levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate.

25. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. §9606(a).

26. The actions required by this Order are necessary to protect the public health or welfare or the environment, are in the public interest, and are consistent with CERCLA and the National Contingency Plan ("NCP"), 40 CFR Part 300.

## VI. ORDER

27. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and other information available to EPA, it is hereby ordered and agreed that Respondent shall undertake a removal action at the Site. All activities specified below shall be initiated and completed as soon as possible even though maximum time periods for their completion are specified herein.

### A. Designation of Contractor and Project Coordinator

28. Within five (5) days of the effective date of this Order, Respondent shall select a Project Consultant Firm and submit the proposed Project Consultant Firm's name, address, telephone number, and qualifications to EPA along with the name and qualifications of a Project Coordinator, who shall be an employee of the Project Consultant Firm. The Project Coordinator, as an agent for Respondent and the Project Consultant Firm, shall be responsible for oversight of the implementation of this Order. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of any Project Consultant Firm and Project Coordinator proposed by Respondent. If EPA disapproves of a proposed Project Coordinator, Respondent shall propose a different Project Consultant Firm or Project Coordinator, as the case may be, and shall notify EPA of that firm's or person's name, address, telephone number, and qualifications within seven (7) days following EPA's disapproval. Receipt by Respondent's approved Project Consultant Firm or Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Respondent. Respondent may change its designated Project Consultant Firm or Project Coordinator, subject to disapproval by EPA as set forth

in this Paragraph. Respondent shall notify EPA at least seven (7) days before such a change is made. The initial notification may be made orally but shall be promptly followed by a written notice.

29. Respondent shall retain a contractor to perform the Work. Respondent shall notify EPA of the name and qualifications of a proposed contractor within fourteen (14) days of the effective date of this Order. Respondent shall also notify EPA of the name and qualifications of any other contractor or subcontractor proposed to perform Work under this Order at least ten (10) days prior to commencement of such Work. With respect to any proposed contractor, Respondent shall demonstrate that the proposed contractor has a quality system that complies with ANSI/ASQC E-4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's QMP or equivalent documentation as determined by EPA. The QMP shall be prepared in accordance with specifications set forth in "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA.

30. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors proposed by Respondent to conduct the Work. If EPA disapproves of any of Respondent's proposed contractors or subcontractors to conduct the Work, Respondent shall propose a different contractor or subcontractor within fourteen (14) days of EPA's disapproval.

31. Respondent shall provide a copy of this Order to the Project Consultant Firm and to each contractor and subcontractor retained to perform the Work required by this Order. Respondent shall include, in all contracts or subcontracts entered into for Work required under this Order, provisions stating that such Project Consultant Firm, contractors or subcontractors, including their respective agents and employees, shall perform the Work required by such contracts or subcontracts in compliance with this Order and all applicable laws and regulations. Respondent shall be responsible for ensuring that its Project Consultant Firm, contractors and subcontractors perform the Work contemplated herein in accordance with this Order.

32. Respondent shall direct all submissions required by this Order to the EPA On-Scene Coordinator ("OSC") and the EPA Remedial Project Manager ("RPM") by certified mail at the address provided in Paragraph 51.

## B. Description of Work

33. Within twenty one (21) days of the effective date of this Order, Respondent shall submit to EPA for review and approval, a detailed work plan (hereinafter, the "Work Plan") and implementation schedule providing for the performance of the following tasks:

- a. Access to all property necessary for the performance of all required Work;
- b. Construction and operation of a soil vapor extraction ("SVE") system at the Site, consistent with the following EPA published documents: "Soil Vapor Extraction: Reference Handbook", EPA/540/2-91/003 (February 1991, or as updated); and "Analysis of Selected Enhancements for Soil Vapor Extraction", EPA-542-R-97-007 (September 1997, or as updated) and complying with all local noise ordinances;
- c. Construction and operation of sub-slab depressurization systems, consistent (as appropriate) with EPA's guidance "Radon Mitigation Standards (RMS)", EPA/402/R-93/078 (April 1994, or as updated);
- d. Operation and maintenance of the SVE system and sub-slab depressurization systems until six months after the later of the following: (1) concentrations of TCE in indoor air do not exceed  $0.36 \text{ ug/m}^3$  or, as determined by the procedures in the work plan, the Site-specific indoor air background level for TCE; and (2) concentrations of TCE in representative soil-gas samples at the intake of the SVE and the sub-slab depressurization systems do not exceed  $36 \text{ ug/m}^3$  and  $3.6 \text{ ug/m}^3$ , respectively. If selected, the Site-specific background level for TCE shall be developed in accordance with the EPA guidance entitled "Establishing Background Levels", OSWER Directive No. 9285.7-19FS (September 1995, or as updated) and "Role of Background in the CERCLA Cleanup Program", OSWER Directive No. 9285.6-07P (April 26, 2002);
- e. During system operation, performance of SVE and sub-slab depressurization systems monitoring, and indoor air monitoring, as per EPA and/or NYSDOH approved methods and protocols (see, *inter alia*, [www.epa.gov/correctiveaction/eis/vapor.htm](http://www.epa.gov/correctiveaction/eis/vapor.htm)). During periods when the Site building is occupied, indoor air



monitoring and sampling shall be conducted at minimum on a quarterly basis;

- f. Monitoring of indoor air on a quarterly basis in the on-Site building for a period of eighteen (18) months once the SVE system and sub-slab depressurization systems are shut off. If during the eighteen (18) months monitoring period, concentrations of TCE in indoor air exceed  $0.36 \text{ ug/m}^3$ , or the indoor air background level established pursuant to 33.d., if any, for TCE, the SVE system and sub-slab depressurization systems shall be reactivated and operated in accordance with subparagraph d., above, unless other measures are approved by EPA; and quarterly monitoring shall be continued, as required; and
- g. Operation and maintenance of an appropriate treatment technology (i.e., thermal oxidation, vapor phase granular activated carbon ["GAC"], etc.) for off-gases if required by EPA based on, inter alia, New York State air standards.

34. The Work Plan shall include or refer to other site documents which include a detailed description of how the tasks referred to in Paragraph 33 above will be accomplished, and shall also include, but not be limited to, the following:

- a. A Quality Assurance/Quality Control ("QA/QC") Plan and a description of Chain of Custody Procedures that satisfy the following requirements:
  - i. The QA/QC Plan shall be completed in accordance with the most recent edition of the following documents:
    - (1) "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures," OSWER Directive Number 9360.4-01;
    - (2) "Environmental Response Team Standard Operating Procedures," OSWER Directive Numbers 9360.4-02 through 9360.4-08;
    - (3) "Test Methods for Evaluating Solid Wastes" (SW-846);

- (4) "EPA Requirements for Quality Assurance Project Plans" (QA/R-5) (EPA/240/B-01/003, March 2001) or found at <http://www.epa.gov/region02/desa/hsw/sops.htm>; and
  - (5) "EPA Guidance for Quality Assurance Project Plans" (QA/G-5) (EPA/600/R-98/018, February, 1998).
- ii. Respondent shall provide to EPA the QA/QC procedures to be followed by all sampling teams and laboratories performing data collection and/or analysis. Respondent shall only use laboratories that have a documented quality system which complies with ANSI/ASQC E-4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the quality system requirements. Upon request by EPA, Respondent shall have the laboratory(ies) that it will be using analyze samples submitted by EPA for quality-assurance monitoring.
- iii. Respondent shall use QA/QC procedures in accordance with the QA/QC Plan submitted and approved by EPA pursuant to this Order and shall use standard EPA Chain of Custody procedures, as set forth in "EPA Requirements for Quality Assurance Project Plans (EPA QA/R-5)" (EPA/240/B-01/003, March 2001) and "EPA Guidance for Quality Assurance Project Plans (EPA QA/G-5)" (EPA 600/R-98/018, February 1998), and any amendments to these documents, for all sample collection and analysis activities conducted pursuant to this Order.
- iv. If performance of any subsequent phase of the Work required by this Order requires alteration of the QA/QC Plan, Respondent shall submit to EPA for review and approval proposed amendments to the QA/QC Plan;

- v. For any analytical work performed, including that performed in a fixed laboratory, in a mobile laboratory, or in on-site screening analyses, Respondent must submit to EPA a "Non-CLP Superfund Analytical Services Tracking System" form with respect to each laboratory utilized during a sampling event within thirty (30) days after acceptance of the analytical results. Upon completion, such documents shall be submitted to the EPA OSC, with a copy of the form and transmittal letter to:

Regional Sample Control Center Coordinator (RSCC)  
USEPA-Division of Environmental Science and  
Assessment  
MS - 215  
2890 Woodbridge Avenue  
Edison, New Jersey 08837

b. A Sampling Plan that includes, at a minimum, the following: the number and types of samples to be collected, sample collection methodology, and the analyses to be performed. Air, soil, concrete slab, building floor (where spills and leaks may have occurred), drum, container, floor drain, storm sewer drain and tank samples shall, if applicable, be analyzed for Target Compound List ("TCL") volatile organic compounds. Additionally, the Sampling Plan must include provisions requiring the following:

- i. that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance;
- ii. that upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondent while performing Work under this Order. Respondent shall notify EPA not less than seven (7) days in advance of any sample collection activity. EPA shall have the right to take any additional samples that it deems necessary; and
- iii. that Respondent submit to EPA, upon receipt, the results of all sampling or tests and all other data generated by Respondent or its contractor(s), or on the

Respondent's behalf during implementation of this Order.

c. A Disposal Plan addressing the proper disposal of site generated Waste (i.e., spent vapor phase GAC, soil cuttings, etc.) to treatment, storage and disposal facilities in compliance with RCRA, 42 U.S.C. §§6901-6991, as well as the NCP at 40 C.F.R. §300.440;

d. Maps depicting, to the extent known and determined, all work and safety zones, including but not limited to, exclusion zones, contaminant reduction zones, staging and sampling areas, Waste segregation areas, and command posts, all located from fixed reference points and plotted to scale;

e. A plan for providing Site security including, but not limited to, measures for keeping unauthorized personnel from entering restricted work areas;

f. A proposed, detailed and expeditious project schedule for accomplishing the assigned tasks;

g. An Operation & Maintenance ("O&M") Plan which covers both implementation and long-term maintenance of the SVE and sub-slab systems. The O&M Plan shall include the following elements:

- i. Description of O&M;
- ii. Description of potential operating problems;
- iii. Description of routine monitoring and laboratory testing;
- iv. Description of alternate O&M to prevent undue hazard should the system fail;
- v. Corrective Action Plan;
- vi. Safety Plan;
- vii. Description of equipment;
- viii. Records and reporting mechanisms required;
- ix. O&M staffing requirements (training/qualification/experience);
- x. Description of treatment/performance criteria and standards;
- xi. Inspection requirements and frequency; and
- xii. Quality assurance and quality control procedures and requirements associated with monitoring and laboratory testing activities.

35. EPA will either approve the Work Plan, or will require modifications thereto pursuant to Section VI.D., below. Upon its approval by EPA, the Work Plan shall be deemed to be incorporated into and an enforceable part of this Order.

36. Health and Safety Plan. Within thirty (30) days of the effective date of this Order, Respondent shall review the existing site health and safety plan to see if modifications are needed, and submit an evaluation to EPA. If requested by EPA, Respondent shall submit for EPA review and comment a new or modified plan, that ensures the protection of the public health and safety during performance of on-Site Work. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 CFR Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

37. Within five (5) days after EPA's approval of the Work Plan, Respondent shall commence implementation of the EPA-approved Work Plan. Respondent shall fully implement the EPA-approved Work Plan in accordance with the terms and schedule therein and in accordance with this Order.

38. Respondent shall notify EPA of the names and addresses of all off-Site Waste treatment, storage, or disposal facilities selected by Respondent to receive Wastes from the Site. Respondent shall provide such notification to EPA at least five (5) days prior to off-Site shipment of such Wastes. Prior to transportation and disposal of Waste, EPA approval of any selected off-Site facility is required. Following the ultimate disposal of Wastes, Respondent shall provide to EPA valid Certificates of Disposal from the disposal facilities used for all Wastes shipped off-Site.

39. At the time of completion of all Work required by this Order, demobilization shall include sampling if deemed necessary by EPA, and proper disposal or decontamination of protective clothing, remaining laboratory samples taken pursuant to this Order, and any equipment or structures constructed to facilitate the Work performed under the Order.

C. On-Scene Coordinator, Remedial Project Manager, Other Personnel, and Modifications to EPA-Approved Work Plan

40. All Work required of Respondent under the terms of this Order shall be performed only by qualified persons possessing all necessary permits, licenses, and other authorizations required by federal, state, and local governments, and all Work conducted pursuant to this Order shall be performed in accordance with prevailing professional standards.

41. The current EPA OSC for the Site is: Lou DiGuardia, Removal Action Branch, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, 2890 Woodbridge Avenue, Building 209 (MS-211), Edison, N.J. 08837; (732) 906-6927. The current EPA RPM for the Site is: Mark Dannenberg, New York Remediation Branch, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, 290 Broadway, 20<sup>th</sup> Floor, New York, New York 10007, (212) 637-4251. EPA will notify the Project Coordinator if EPA's OSC or RPM should change.

42. EPA, including the OSC or the RPM, and/or their authorized representatives, will conduct oversight of the implementation of this Order. The OSC and RPM shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Order, or to direct any other response action undertaken by EPA or Respondent at the Site consistent with this Order. Absence of the OSC or RPM from the Site shall not be cause for stoppage of Work unless specifically directed by the OSC or RPM.

43. As appropriate during the course of implementation of the Work required of Respondent pursuant to this Order, Respondent or its consultants or contractors, acting through the Project Coordinator, may confer with EPA concerning the required Work. Based upon new circumstances or new information not in the possession of EPA on the date of this Order, the Project Coordinator may request, in writing, EPA approval of modification(s) to the EPA-approved Work Plan. Only modifications approved by EPA in writing shall be deemed effective. Upon approval by EPA, such modifications shall be deemed incorporated in this Order and shall be implemented by Respondent.

D. Plans and Reports Requiring EPA Approval

44. If EPA disapproves or otherwise requires any modifications to any plan, report or other item required to be submitted to EPA for approval pursuant to this Order, Respondent shall have ten

(10) days or such other period of time as approved by EPA, from the receipt of notice of such disapproval or the required modifications to correct any deficiencies and resubmit the plan, report, or other written document to EPA for approval, unless a shorter or longer period is specified in the notice. Any notice of disapproval will include an explanation of why the plan, report, or other item is being disapproved. Respondent shall address each of the comments and resubmit the plan, report, or other item with the required changes within the time stated above. At such time as EPA determines that the plan, report, or other item is acceptable, EPA will transmit to Respondent a written statement to that effect.

45. If any plan, report, or other item required to be submitted to EPA for approval pursuant to this Order is disapproved by EPA, even after being resubmitted following Respondent's receipt of EPA's comments on the initial submittal, Respondent may be deemed to be out of compliance with this Order. If any resubmitted plan, report, or other item, or portion thereof, is disapproved by EPA, EPA may again direct Respondent to make the necessary modifications thereto, and/or EPA may amend or develop the item(s) and recover the costs from Respondent of doing so. Respondent shall implement any such item(s) as amended or developed by EPA.

46. EPA shall be the final arbiter in any dispute regarding the sufficiency or acceptability of all documents submitted and all activities performed pursuant to this Order. EPA may modify those documents and/or perform or unilaterally require the performance of additional work.

47. All plans, reports and other submittals required to be submitted to EPA pursuant to this Order, upon approval by EPA, shall be deemed to be incorporated in and an enforceable part of this Order.

#### E. Reporting

48. During the implementation of this Order, Respondent shall provide performance monitoring data of the SVE system and sub-slab depressurization systems within 30 days of the receipt of laboratory data. In addition, Respondent shall also provide written progress reports to EPA regarding the Work by the fifteenth day of each month. Such progress reports shall, among other things, (a) describe the actions taken toward achieving compliance with this Order during the previous month, (b) include all results of sampling and tests and all other data received by Respondent during that period, unless provided in a previous submittal, in the implementation of the Work required hereunder,

(c) describe all Work that is scheduled for the next month, (d) provide other information relating to the progress of work as is customary in the industry, (e) include information regarding percentage of completion, all delays encountered or anticipated that may affect the future schedule for completion of the Work required hereunder, and a description of all efforts made to mitigate those delays or anticipated delays, and (f) provide EPA with at least 15 days notice before the Site property is to be leased and/or occupied.

49. Respondent shall include in the progress reports required in Paragraph 48, above, a schedule for the field activities which are expected to occur pursuant to this Order during the upcoming month. Respondent shall, in addition, provide EPA with at least one week advance notice of any change in that schedule.

50. The Final Report referred to in Paragraph 52 below, and other documents submitted by Respondent to EPA which purport to document Respondent's compliance with the terms of this Order shall be signed by a responsible official of Respondent or by the Project Coordinator who has been delegated this responsibility by Respondent and whose qualifications have been found by EPA to be acceptable pursuant to Paragraph 28 of this Order. For purposes of this paragraph, a responsible official is an official who is in charge of a principal business function.

51. The Work Plan, the Final Report, and other documents required to be submitted to EPA under this Order shall be sent to the following addressees:

3 copies to:

U.S. Environmental Protection Agency  
Removal Action Branch  
Emergency & Remedial Response Division  
2890 Woodbridge Avenue  
Bldg. 209 (MS-211)  
Edison, NJ 08837  
Attention: Computer Circuits Site, On-Scene  
Coordinator

3 copies to:

United States Environmental Protection Agency  
New York Remediation Branch  
Emergency & Remedial Response Division  
290 Broadway, 20th Floor  
New York, New York 10007-1866  
Attention: Computer Circuits Site, Remedial Project  
Manager



1 copy to:

New York/Caribbean Superfund Branch  
Office of Regional Counsel  
United States Environmental Protection Agency  
290 Broadway, 17th Floor  
New York, New York 10007-1866  
Attention: Computer Circuits Site, Site Attorney

2 copies to:

John Strang  
Eastern Remedial Action Federal Projects Section  
New York State Department of Environmental  
Conservation  
625 Broadway  
Albany, New York 12233  
Attention: Computer Circuits Site

1 copy to:

Theodore W. Firetog  
111 Thomas Powell Boulevard  
Farmingdale, New York 11735-2251

52. Within forty five (45) days after Respondent has completed the Work required pursuant to Paragraph 33 above and the approved Work Plan, Respondent shall submit a Final Report for EPA review and approval summarizing the actions taken to comply with this Order. The Final Report shall include:

- a. a synopsis of all Work performed under this Order;
- b. a detailed description of all EPA-approved modifications to the Work Plan which occurred during Respondent's performance of the Work required under this Order;
- c. a listing of quantities and types of materials removed from the Site or handled on-Site;
- d. a discussion of removal and disposal options considered for those materials;
- e. a listing of the ultimate destination of those materials;
- f. a presentation of the analytical results of all sampling and analyses performed, including QA/QC data and chain of custody records;

g. accompanying appendices containing all relevant documentation generated during the work (e.g., manifests, invoices, bills, contracts, and permits);

h. an accounting of expenses incurred by the Respondent at the Site; and

i. the following certification signed by a person who supervised or directed the preparation of the Final Report:

"I certify that the information contained in and accompanying this certification is true, accurate, and complete."

53. EPA either will approve the Final Report or will require modifications thereto pursuant to Paragraphs 44 - 47, above.

#### F. Oversight

54. During the implementation of the requirements of this Order, Respondent and its contractor(s) and subcontractors shall be available for such conferences with EPA and inspections by EPA or its authorized representatives as EPA may determine are necessary to adequately oversee the Work being carried out or to be carried out by Respondent under this Order, including inspections at the Site and at laboratories where analytical work is being performed hereunder.

55. Respondent and its employees, agents, contractor(s) and consultant(s) shall cooperate with EPA in its efforts to oversee Respondent's implementation of this Order.

#### G. Community Relations

56. Respondent shall cooperate with EPA in providing information relating to the Work required hereunder to the public. As requested by EPA, Respondent shall participate in the preparation of all appropriate information disseminated to the public; participate in public meetings which may be held or sponsored by EPA to explain activities at or concerning the Site; and provide a suitable location for public meetings, as needed. EPA approval is required for all community outreach related to the Site.

#### H. Access to Property and Information

57. EPA and NYSDEC and their designated representatives, including, but not limited to, employees, agents, contractor(s) and consultant(s) thereof, shall be permitted to observe the Work carried out pursuant to this Order. Respondent shall at all

times permit EPA, NYSDEC, and its designated representatives full access to and freedom of movement at the Site and any other premises where Work under this Order is to be performed for purposes of inspecting or observing Respondent's progress in implementing the requirements of this Order, verifying the information submitted to EPA by Respondent, conducting investigations relating to contamination at the Site, or for any other purpose EPA determines to be reasonably related to EPA oversight of the implementation of this Order.

58. In the event that Work under this Order is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain access agreements from the owners or occupants within twenty (20) days of the effective date of this Order for purposes of implementing the requirements of this Order. Such agreements shall provide access not only for Respondent, but also for EPA and its designated representatives or agents, as well as NYSDEC and its designated representatives or agents. Such agreements shall specify that Respondent is not EPA's representative with respect to liability associated with Site activities. If such access agreements are not obtained by Respondent within the time period specified herein, Respondent shall immediately notify EPA of its failure to obtain access and shall include in that notification a summary of the steps Respondent have taken to attempt to obtain access. Subject to the United States' non-reviewable discretion, EPA may use its legal authorities to obtain access for Respondent, may perform those response actions with EPA contractors at the property in question, or may terminate the Order if Respondent cannot obtain access agreements. If EPA performs those tasks or activities with EPA contractors and does not terminate the Order, Respondent shall perform all other activities not requiring access to that property. Respondent shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables.

59. Upon request, Respondent shall provide EPA with access to all records and documentation related to the conditions at the Site, hazardous substances found at or released from the Site, and the actions conducted pursuant to this Order except for those items, if any, subject to the attorney-client or work product privilege. Nothing herein shall preclude the Respondent from asserting a business confidentiality claim pursuant to 40 C.F.R. Part 2, Subpart B. All data, information and records created, maintained, or received by Respondent or its contractor(s) or consultant(s) in connection with the implementation of the Work under this Order, including, but not limited to, contractual documents, invoices, receipts, work orders and disposal records shall, without delay, be made available to EPA upon request, subject to the same privileges specified above in this Paragraph.

EPA shall be permitted to copy all such documents. Respondent shall submit to EPA upon receipt the results of all sampling or tests and all other technical data generated by Respondent or its contractor(s), or on the Respondent's behalf, in connection with the implementation of this Order.

60. Upon request by EPA, Respondent shall provide EPA or its designated representatives with duplicate and/or split samples of any material sampled in connection with the implementation of this Order.

61. Notwithstanding any other provision of this Order, EPA hereby retains all of its information gathering, access, and inspection authority under CERCLA, RCRA, and any other applicable statute or regulations.

#### I. Record Retention, Documentation, Availability of Information

62. Respondent shall preserve all documents and information relating to Work performed under this Order, or relating to Waste materials found on or released from the Site, for ten years after completion of the Work required by this Order. At the end of the ten year period, Respondent shall notify EPA at least thirty (30) days before any such document or information is destroyed that such documents and information are available for inspection. Upon request, Respondent shall provide EPA with the originals or copies of such documents and information.

63. All documents submitted by Respondent to EPA in the course of implementing this Order shall be available to the public unless identified as confidential by Respondent pursuant to 40 CFR Part 2, Subpart B, and determined by EPA to merit treatment as confidential business information in accordance with applicable law. In addition, EPA may release all such documents to NYSDEC, and NYSDEC may make those documents available to the public unless Respondent conform with applicable New York law and regulations regarding confidentiality. Respondent shall not assert a claim of confidentiality regarding any monitoring or hydrogeologic data, any information specified under Section 104(e)(7)(F) of CERCLA, 42 U.S.C. §9604 (e)(7)(F), or any other chemical, scientific or engineering data relating to the Work performed hereunder.

#### J. Off-Site Shipments

64. All hazardous substances, pollutants, or contaminants removed from the Site pursuant to this Order for off-site treatment, storage, or disposal shall be treated, stored, or disposed of in compliance with (a) Section 121(d)(3) of CERCLA, 42 U.S.C. §9621(d)(3), (b) Section 300.440 of the NCP, (c) RCRA,

(d) the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §2601, et seq., and (e) all other applicable federal and state requirements.

65. If hazardous substances from the Site are to be shipped outside of New York State, Respondent shall provide prior notification of such out-of-state Waste shipments in accordance with the EPA memorandum "Notification of Out-of-State Shipments of Superfund Site Wastes" (OSWER Directive 9330.2-07, September 14, 1989). At least five (5) working days prior to out-of-state Waste shipments, Respondent shall notify the environmental agency of the accepting state of the following: (a) the name and location of the facility to which the Wastes are to be shipped; (b) the type and quantity of Waste to be shipped; (c) the expected schedule for the Waste shipments; (d) the method of transportation and name of transporter; and (e) the treatment and/or disposal method of the Waste streams.

66. Certificates of destruction must be provided to EPA upon Respondent's receipt of such. These certificates must be included in the Final Report.

#### K. Compliance With Other Laws

67. All actions required pursuant to this Order shall be performed in accordance with all applicable local, state, and federal laws and regulations except as provided in CERCLA §121(e)(1), 42 U.S.C. §9621(e)(1), and 40 CFR §300.415(j). In accordance with 40 CFR §300.415(j), all on-Site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. (See "Superfund Removal Procedures: Guidance on the Consideration of ARARs During Removal Actions," OSWER Directive No. 9360.3-02, August 1991).

68. Except as provided in Section 121(e)(1) of CERCLA, 42 U.S.C. §9621(e)(1), and the NCP, no permit shall be required for any portion of the Work required hereunder that is conducted entirely on-Site. Where any portion of the Work that is not on-Site requires a federal or state permit or approval, Respondent shall submit timely applications and shall take all other actions necessary to obtain and to comply with all such permits or approvals. This Order is not, nor shall it be construed to be, a permit issued pursuant to any federal or state statute or regulation.

L. Emergency Response and Notification of Releases

69. Upon the occurrence of any event during performance of the Work required hereunder which, pursuant to Section 103 of CERCLA, 42 U.S.C. §9603, requires reporting to the National Response Center, telephone number (800) 424-8802, Respondent shall immediately orally notify the EPA On-Scene Coordinator. In the event of the unavailability of the EPA On-Scene Coordinator, Respondent shall orally notify the RPM, and if the RPM is unavailable, the EPA Region II Emergency 24-hour Hot Line at (732) 548-8730, of the incident or Site conditions. Respondent shall also immediately notify the EPA On-Scene Coordinator in writing and shall submit a written report to EPA within seven (7) days after the onset of such an event, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. The reporting requirements of this Paragraph are in addition to, not in lieu of, reporting under Section 103 of CERCLA, 42 U.S.C. §9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. §11004.

70. In the event of any action or occurrence during Respondent's performance of the requirements of this Order which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize the threat and shall immediately notify EPA as provided in the preceding Paragraph. Respondent shall take such action in accordance with applicable provisions of this Order including, but not limited to, the Health and Safety Plan. In the event that EPA determines that (a) the activities performed pursuant to this Order, (b) significant changes in conditions at the Site, or (c) emergency circumstances occurring at the Site pose a threat to human health or the environment, EPA may direct Respondent to stop further implementation of any actions pursuant to this Order or to take other and further actions reasonably necessary to abate the threat.

71. Nothing in the preceding Paragraph shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at, or from the Site.

M. Reimbursement of Future Response Costs

72. Respondent agrees to reimburse EPA for all Future Response Costs. For purposes of this Paragraph, "Future Response Costs"

shall mean (a) all direct and indirect costs incurred by EPA in overseeing Respondent's implementation of the Work until the date of EPA's written notification pursuant to Paragraph 99 of this Order that the Work has been completed; (b) all direct and indirect costs incurred by EPA in connection with obtaining access for Respondent in accordance with Paragraph 58 of this Order; and (c) all other direct and indirect costs incurred by EPA in connection with the implementation of this Order. EPA will periodically send billings to Respondent for Future Response Costs. The billings will be accompanied by a printout of cost data in EPA's financial management system. Respondent shall, within thirty (30) days of receipt of each such billing, remit payment via electronic funds transfer ("EFT") to EPA at Mellon Bank, Pittsburgh, Pennsylvania. To make payment via EFT, Respondent shall provide the following information to its bank:

- . Amount of payment:
- . Title of Mellon Bank account to receive the payment: EPA
- . Account code for Mellon Bank account receiving the payment: 9108544
- . Mellon Bank ABA Routing Number: 043000261
- . Name of Respondent: 145 Marcus Blvd., Inc.
- . Order Index number: CERCLA-02-2004-2005
- . Site/spill identifier: 02EJ

The amounts to be paid by Respondent pursuant to this Paragraph shall be deposited in the Computer Circuits Site Special Account within the EPA Hazardous Substance Superfund, to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

73. At the time of payment, Respondent shall send notice that such payment has been made to the EPA parties identified in Paragraph 51 and to:

Chief, Financial Management Branch  
U.S. Environmental Protection Agency, Region II  
290 Broadway, 29th Floor  
New York, NY 10007-1866

74. Said notice shall include the date of the EFT, the payment amount, the name of this Site, the Index Number of this Order, and the names and addresses of Respondent.

75. Respondent shall pay interest on any amounts overdue under Paragraph 72 above. Such interest shall begin to accrue on the first day that payment is overdue. Interest shall accrue at the

rate of interest on investments of the Hazardous Substances Superfund, in accordance with Section 107(a) of CERCLA.

#### N. Dispute Resolution

76. Respondent may dispute a bill for Future Response Costs and/or a demand for stipulated penalties under this Order. Respondent agrees to limit any dispute concerning a bill for Future Response Costs to one or more of the following assertions: (a) a mathematical error was made by EPA in its calculation of costs, (b) a cost item that was included represents a cost that is inconsistent with the NCP, or (c) a cost item that was included in the bill is outside the scope of the definition of "Future Response Costs" set forth in Paragraph 72 of this Order. Respondent agrees to limit any dispute of a demand for stipulated penalties to whether the non-compliance which is the basis for the stipulated penalty demand occurred, and whether the stipulated penalty was calculated in accordance with the terms of Section P, below. Notwithstanding any other provision of this Consent Order, Respondent may not invoke the dispute resolution procedures more than once regarding the same issue. Disputes under this Paragraph, if any, shall be raised and resolved in the manner described below:

a. Respondent shall notify EPA in writing of its objections within twenty-one (21) days of receipt of a bill for Future Response Costs or a demand for stipulated penalties. Respondent's written objections shall define the dispute, identify specifically which amounts are being contested, state the basis of Respondent's objection under this Paragraph, and be sent to EPA by certified mail, return receipt requested at the addresses listed in Paragraph 51. EPA and Respondent then have an additional fourteen (14) days from the date of Respondent's written notice to attempt to reach agreement.

b. In the event of the dispute of a bill for Future Response Costs, Respondent shall within twenty-one (21) days of the receipt of the bill: (1) pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 72; and (2) establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of New York and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondent shall send to EPA a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as



a bank statement showing the initial balance of the escrow account.

c. If an agreement resolving the dispute is not reached within fourteen (14) days, Respondent may, within seven (7) days of the conclusion of the aforementioned 14-day period, request a determination by the Chief of the Removal Action Branch of the Emergency and Remedial Response Division, EPA Region II (hereinafter, the "Chief"). Such a request by Respondent shall be made in writing. The Chief will provide Respondent with a written statement setting forth EPA's position and the basis for that position. The determination of the Chief is EPA's final decision. There shall be no judicial review of such decision. Respondent shall proceed in accordance with EPA's final decision regarding the matter in dispute, regardless of whether Respondent agrees with the decision. If the Chief rejects Respondent's arguments concerning an EPA bill for Future Response Costs, in whole or in part, then Respondent shall, within five (5) days of receipt of the Chief's determination, direct the escrow holder to remit to EPA that portion of the disputed costs (with accrued interest) which the Chief determines should be paid by Respondent pursuant to this Paragraph. The balance of the escrow account, if any, shall be disbursed to Respondent. If the Chief rejects Respondent's arguments concerning EPA's demand for stipulated penalties, in whole or in part, then Respondent shall, within five (5) days of receipt of the Chief's determination, remit to EPA that portion of the disputed stipulated penalties which the Chief determines should be paid by Respondent pursuant to this Paragraph. If Respondent does not agree to pay or does not actually pay the amount specified by the Chief's determination, EPA reserves the right in its sole discretion to seek enforcement of the Chief's decision, to seek further stipulated penalties, and/or to seek any other appropriate relief.

#### O. Force Majeure

77. "Force majeure", for purposes of this Order, is defined as any event arising from causes beyond the control of Respondent and of any entity controlling, controlled by, or under common control with Respondent, including its contractors and subcontractors, that delays the timely performance of any obligation under this Order notwithstanding Respondent's best efforts to avoid the delay. The requirement that Respondent exercise "best efforts to avoid the delay" includes using best efforts to anticipate any potential force majeure event and best

efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent practicable. Examples of events that are not force majeure events include, but are not limited to, increased costs or expenses of any work to be performed under this Order or the financial difficulty of Respondent to perform such work.

78. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a force majeure event, Respondent shall notify by telephone the EPA On-Scene Coordinator or, in his absence, the RPM within 48 hours of when Respondent knew or should have known that the event might cause a delay. In addition, Respondent shall notify EPA in writing within seven (7) calendar days after the date when Respondent first become aware or should have become aware of the circumstances which may delay or prevent performance. Such written notice shall be accompanied by all available and pertinent documentation, including third-party correspondence, and shall contain the following: (a) a description of the circumstances, and Respondent's rationale for interpreting such circumstances as being beyond its control (should that be Respondent's claim); (b) the actions (including pertinent dates) that Respondent have taken and/or plan to take to minimize any delay; and (c) the date by which or the time period within which Respondent proposes to complete the delayed activities. Such notification shall not relieve Respondent of any of its obligations under this Order. Respondent's failure to timely and properly notify EPA as required by this Paragraph shall constitute a waiver of Respondent's right to claim an event of force majeure. The burden of proving that an event constituting a force majeure has occurred shall rest with Respondent.

79. If EPA determines that a delay in performance of a requirement under this Order is or was attributable to a force majeure, the time period for performance of that requirement shall be extended as deemed necessary by EPA. Such an extension shall not alter Respondent's obligation to perform or complete other tasks required by the Order which are not directly affected by the force majeure. Respondent shall use its best efforts to avoid or minimize any delay in the performance of its obligations under this Order.

#### P. Stipulated and Statutory Penalties

80. If Respondent fails, without prior EPA approval, to comply with any of the requirements or time limits set forth in or established pursuant to this Order, and such failure is not excused under the terms of Paragraphs 77 through 79 above (Force

Majeure), Respondent shall, upon demand by EPA, pay a stipulated penalty to EPA in the amount indicated below:

- a. For all requirements of this Order, other than the timely provision of progress reports required by Paragraph 48 of this Order, stipulated penalties shall accrue in the amount of \$1,000 per day, per violation, for the first ten days of noncompliance, \$2,000 per day, per violation, for the 11th through 20th day of noncompliance, and \$5,000 per day, per violation, for the 21st day of noncompliance and beyond.
- b. For the progress reports required by Paragraph 48, stipulated penalties shall accrue in the amount of \$500 per day, per violation, for the first ten days of noncompliance, \$1,000 per day, per violation, for the 11th through 30th day of noncompliance, and \$1,500 per day, per violation, for the 31st day of noncompliance and beyond.

81. Any such penalty shall accrue as of the first day after the applicable deadline has passed and shall continue to accrue until the noncompliance is corrected or EPA notifies Respondent that it has determined that it will perform the tasks for which there is non-compliance. Such penalty shall be due and payable thirty (30) days following receipt of a written demand from EPA. Payment of any such penalty to EPA shall be made via EFT in accordance with the procedures in Paragraph 72 above. Respondent shall pay interest on any amounts overdue under this Paragraph. Such interest shall begin to accrue on the first day that the respective payment is overdue. Interest shall accrue at the rate of interest on investments of the Hazardous Substances Superfund, in accordance with Section 107(a) of CERCLA.

82. Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Order. Penalties accrue and are assessed per violation per day. Penalties shall accrue regardless of whether EPA has notified Respondent of a violation or act of noncompliance. The payment of penalties shall not alter in any way Respondent's obligation to complete the performance of the Work required under this Order.

83. Notwithstanding any other provision of this Order, failure of Respondent to comply with any provision of this Order may subject Respondent to civil penalties of up to \$32,500 per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. §9606(b)(1), and the Debt Collection and Improvement Act of 1996 (see Civil Monetary Penalty Inflation Adjustment Rule, 69 Fed. Reg. 7,121 (February 13, 2004)), unless such failure to

comply is excused by EPA under the terms of Paragraphs 77 through 79 above. Respondent may also be subject to punitive damages in an amount at least equal to and not more than three times the amount of any costs incurred by the United States as a result of such failure to comply with this Order, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. §9607(c)(3). Should Respondent violate this Order or any portion thereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. §9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. §9606.

#### Q. Reservation of Rights

84. Nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate, or from requiring the Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondent under Section 107 of CERCLA, 42 U.S.C. §9607, for recovery of any response costs incurred by the United States related to this Order or the Site and not reimbursed by Respondent.

#### R. Other Claims

85. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent or Respondent's employees, agents, contractors, or consultants in carrying out any action or activity pursuant to this Order. The United States or EPA shall not be held out as or deemed a party to any contract entered into by the Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

86. Nothing in this Order constitutes or shall be construed as a satisfaction of or release from any claim or cause of action against the Respondent or any person not a party to this Order for any liability that Respondent or other persons may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for injunctive relief, costs, damages, and interest under Sections 106(a) and 107 of CERCLA, 42 U.S.C. §§9606(a) and 9607. Nothing herein shall

constitute a finding that Respondent is the only responsible parties with respect to the release and threatened release of hazardous substances at, on, and from the Site.

87. Nothing in this Order shall affect any right, claim, interest, defense, or cause of action of any Party hereto with respect to third parties.

88. Nothing in this Order shall be construed to constitute preauthorization under Section 111(a)(2) of CERCLA, 42 U.S.C. §9611(a)(2), and 40 CFR §300.700(d).

89. Respondent hereby waives any rights it may have to seek reimbursement pursuant to Sections 106(b)(2), 111 and/or 112 of CERCLA, 42 U.S.C. §§9606(b)(2), 9611, and/or 9612, or any other provision of law, either directly or indirectly, from EPA or the Hazardous Substance Superfund of costs incurred by Respondent in complying with this Order.

#### S. Indemnification

90. Respondent agrees to indemnify, save, and hold harmless the United States, its agencies, departments, officials, agents, contractors, subcontractors, employees, and representatives from any and all claims or causes of action arising from or on account of acts or omissions of Respondent, its employees, officers, directors, agents, servants, receivers, trustees, successors, assigns, or any other persons acting on behalf of Respondent or under its control, as a result of the fulfillment or attempted fulfillment of the terms and conditions of this Order by Respondent.

91. Respondent waives all claims against the United States on behalf of EPA for damages or reimbursement or for set-off of any payments made or to be made to the United States on behalf of EPA, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States on behalf of EPA with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between the Respondent and any person for performance of Work on or relating to the Site, including but not limited to, claims on account of construction delays.

92. Further, the Respondent agrees to pay the United States all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on acts

or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Order.

#### T. Insurance

93. At least seven (7) days prior to commencing any Work at the Site, Respondent shall submit to EPA a certification that Respondent or its contractors and subcontractors have adequate insurance coverage or have indemnification for liabilities for injuries or damages to persons or property which may result from the activities to be conducted by or on behalf of Respondent pursuant to this Order. Respondent shall ensure that such insurance or indemnification is maintained for the duration of the Work required by this Order.

#### U. Financial Assurance

94. Respondent shall demonstrate its ability to complete the Work required by this Order and to pay all claims that arise from the performance of the Work by obtaining and presenting to EPA within twenty (20) days of the effective date of this Order one of the following: (1) a performance bond; (2) a letter of credit; (3) a guarantee by a third party; or (4) internal financial information to allow EPA to determine that Respondent have sufficient assets available to perform the Work. Respondent shall demonstrate financial assurance in an amount no less than the estimated cost of the Work to be performed by the Respondent under this Order. If EPA determines that the financial assurances submitted by Respondent pursuant to this Paragraph are inadequate, Respondent shall, within fifteen (15) days after receipt of notice of EPA's determination, obtain and present to EPA for approval additional financial assurances meeting the requirements of this Paragraph.

#### V. Contribution Protection

95. At the effective date of this Order, with regard to claims for contribution against Respondent for matters addressed in this Order, the Parties hereto agree that Respondent is entitled to such protection from contribution actions as may be provided by Section 113(f)(2) of CERCLA, 42 U.S.C. §9613(f)(2).

96. Nothing in this Order precludes the United States or the Respondent from asserting any claims, causes of action or demands against any persons not Parties to this Order for indemnification, contribution or cost recovery.

#### W. Modifications

97. This Order may be amended by mutual agreement of EPA and Respondent. Such amendments shall be in writing and shall have as its effective date that date on which such amendments are signed by EPA.

98. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondent shall relieve Respondent of its obligation to obtain such formal approval as may be required by this Order and to comply with all requirements of this Order unless they are formally modified.

#### X. Termination and Satisfaction

99. Upon a determination by EPA (following its receipt of the Final Report referred to in Paragraph 52, above) that the Work required pursuant to this Order has been fully carried out in accordance with this Order, EPA will so notify Respondent in writing. Such notification shall not affect any continuing obligations of Respondent under this Order. If EPA determines that any removal activities have not been completed in accordance with this Order, EPA may so notify Respondent, provide a list of the deficiencies, and require that Respondent correct such deficiencies.

#### Y. Effective Date and Effect of Consent

100. This Order shall become effective on the third (3rd) Working day after it is signed by the Regional Administrator or her delegatee and all times for performance of actions or activities under this Order shall be calculated from said effective date.

101. By signing and taking actions under this Order, Respondent does not necessarily agree with the Findings of Fact and Conclusions of Law contained herein. Respondent does not admit any legal liability or waive any defenses or causes of action with respect to issues addressed in this Order, except as otherwise provided in this Order. However, Respondent agrees not to contest the authority or jurisdiction of the Regional Administrator of EPA Region II or her delegate to issue this Order, and Respondent also agrees not to contest the validity or terms of this Order in any action by or on behalf of EPA to enforce its provisions.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Kathleen Callahan

9/28/04

for Jane M. Kenny

Date of Issuance

Regional Administrator

U.S. Environmental Protection Agency

Region II



CONSENT

The Respondent named below has had an opportunity to confer with EPA to discuss the terms and the issuance of this Order in the Matter of the Computer Circuits Superfund Site, CERCLA-02-2004-2005. The Respondent hereby consents to the issuance of this Order and to its terms. Furthermore, the individual signing this Order on behalf of Respondent certifies that he or she is fully and legally authorized to agree to the terms and conditions of this Order and to bind Respondent.

145 Marcus Blvd., Inc.

(Name of Respondent)

St. Sut

(Signature)

9/24/04

(Date)

Steven Serota

(Printed Name of Signatory)

Vice President

(Title of Signatory)